

RESPONSE TO OFFICE ACTION

A. Status of the Application

A Notice of Appeal is being filed concurrently herewith in view of the current claims having been twice rejected.

B. Status of the Specification

The specification has been amended to insert the deposit information for the two soybean varieties disclosed in U.S. Patent Nos. 5,710,368 and 6,177,617. No new matter is added by the amendment given the incorporation of these patents by reference in the current application and pursuant to *In re Lundak*, 773 F.2d 1216, 227 USPQ 90 (Fed. Cir. 1985) (holding that the addition of information designating the depository, accession number, and deposit date of the deposited cell line in the ATCC after the filing date did not violate the prohibition against new matter in 35 U.S.C. 132).

The Action had asserted that the claims lack written description because essential material, although incorporated in the specification, was allegedly not described in the application. Applicants respectfully traverse as the referenced subject matter need not be set forth with particularity in the specification to satisfy §112. Nonetheless, in order to eliminate this issue for appeal, the specification amendment has incorporated the deposit information for two soybean varieties that disclose the information allegedly not adequately described. The rejection should therefore now moot. See *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 296 F.3d 1316, 1330 (Fed. Cir. 2002) (holding that a biological deposit constitutes a written description of the deposited material under 35 U.S.C. §112, first paragraph).

C. Rejection Under 35 U.S.C. §112, First Paragraph – Written Description

The Action rejects claims 1, 2, 4-10 and 13 as lacking an adequate written description. Applicants respond by appealing the rejection pursuant to the concurrently-filed Notice of Appeal.

D. Rejection Under 35 U.S.C. §112, First Paragraph – Enablement

The Action rejects claims 1-10 and 13 as lacking enablement. Applicants respond by appealing the rejection pursuant to the concurrently-filed Notice of Appeal.

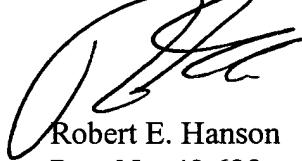
E. Rejection Under 35 U.S.C. §103

The Action rejects claims 1, 2, 4-10 and 13 as being obvious. Applicants respond by appealing the rejection pursuant to the concurrently-filed Notice of Appeal.

F. Conclusion

The Examiner is invited to contact the undersigned attorney at (512) 536-3085 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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